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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

indicated that Channel 255A was also available to Rosendale should there be another expression of interest. To accommodate Station WFNP, SHU and RSB proposed that Station WFNP's license could be modified to Channel *255A at Rosendale instead because, due to a nearby Channel 6 station, there existed a justification for reserving the channel for noncommercial educational use there.

2. The SHU and RSB counterproposal has not yet been accepted by the staff and placed on public notice for the purpose of establishing a reply comment period. Therefore, SHU and RSB wish to take this reply comment opportunity to clarify their position with respect to their proposal.

3. As stated in the counterproposal, RSB requested that the Commission make two modifications to its permit. First, that Channel 273A be substituted for Channel 277A and second, that the community of license be changed from Sharon to Washington. RSB provided a channel study demonstrating that Channel 273A could be allotted to Washington consistent with Sections 73.207 and 73.315 of the Commission's Rules. Since that proposal met the Commission's technical rules, the counterproposal can be accepted and considered by the Commission.^{1/} Generally, nontechnical matters that may cause

^{1/} The other proposals met the Commission's technical rules as well. Channel 277A would remain at Sharon and Channel 255A was already suggested for allotment to Rosendale in the Notice.

the Commission to ultimately deny a proposal do not present an obstacle to the acceptance of a proposal if the proposal complies with the basic requirements set forth in the Appendix such as service to affected parties as well as the Commission's spacing rules. When considering an acceptable proposal, the Commission can apply its rules and policies with respect to such matters as a change in community of license and its comparative priorities. But these legal matters should not be an impediment to the initial determination of whether to accept a counterproposal where a technically sufficient showing has been made that the proposal can otherwise be considered.

4. For example, should the Commission decide that one of its change in community license prerequisites has not been met, the remainder of the SHU/RSB counterproposal could still be accepted and considered. In this regard, should the Commission decide not to approve RSB's requested change in community of license to Washington, New York, RSB still desires to change channels so that it could achieve a 6 kW improvement and can pave the way for the use of Channel *277A to provide a first noncommercial educational service to Sharon and its surrounding area. This position was not expressly stated in the counterproposal although RSB believes that such a consequence was implicit in its proposal. In other words, if RSB cannot achieve a modification of its permit to serve Washington at this stage, it is still interested in changing channels at Sharon.

Such a proposal is clearly within the scope of RSB's proposal because Channel 273A can be allotted to Sharon consistent with the Commission's spacing requirements as well.^{2/}

5. By the same token, SHU proposed that Channel *277A remain at Sharon and be reserved to provide a first local noncommercial educational ("NCE") service and provide a first and second NCE service to substantial unserved and underserved areas. While SHU provided a channel study to demonstrate that Channel *277A could be allotted to Sharon at a specific set of coordinates, SHU recognizes that the reference point that the Commission adopts may be at a different set of coordinates. SHU wishes to clarify its position that in the event RSB's proposal to relocate to Washington and change channels is denied, SHU sincerely desires to provide a greatly needed NCE service to Sharon and its surrounding area. If RSB must remain on Channel 277A, SHU would be willing to accept another channel such as Channel *273A to provide the noncommercial educational service. SHU's showing that the Channel 6 Station WRGB, Schenectady, New York, precludes the use of the NCE portion of the FM band (Channels 201-220) in this area would justify the reservation of Channel *273A as well as any other channel the Commission's staff may find if it prefers to allocate a different channel to

^{2/} In the attached channel study, RSB confirms that Channel 273A meets the Commission's spacing requirements at either Station WQQQ's currently authorized site (BPH-880504MC) or the site for which it has a pending application to relocate (BMPH-920709IB).

Sharon. Thus, since SHU provided a technically acceptable showing that Channel *277A can be used at Sharon consistent with the Commission's Rules, SHU wishes to make it clear that it would accept a different channel such as Channel *273A, in the event that the RSB proposal either to change community of license or to change its channel or both are denied.

6. The public interest benefits in considering SHU's proposal to establish an NCE service to Sharon are compelling. SHU would provide a first noncommercial educational service to 17,787 persons in a 736 sq. km. area and a second NCE service to 11,865 persons in a 459 sq. km. area serving the Commission's

channel allotments where interest has been expressed.^{3/} See e.g., Pinewood, South Carolina, recons. denied, 4 FCC Rcd 8536 (1989), review denied, 5 FCC Rcd 7609 (1990).

8. In Pinewood, the Commission held that once a timely counterproposal was filed, alternate channels can be considered for the subject communities, consistent with the notice Administrative Procedure Act, even if filed after the initial comment date. Such proposals fall within the "logical outgrowth" test of whether a rule making action is based on adequate notice and opportunity for comment.

9. Here, no other party would be affected by a lack of notice should Channel 273A be substituted for Channel 277A at Sharon rather than Washington. Such action falls within the scope of the proposal offered by RSB to change community of license and to change the channel. The two parts of RSB's proposal were not inextricably intertwined. As shown, the channel change to 273A at Sharon could be made without also changing the community.

10. Alternatively, should RSB's proposal be denied, SHU's proposal to establish a noncommercial educational service does not depend on the use of Channel *277A. Other channels would be acceptable to SHU, such as Channel *273A, for this purpose. The

^{3/} For the record, SHU reiterates that should the Commission allocate a channel to Sharon, it will apply for the channel and, if authorized, construct the facility.

allotment of an alternate channel is consistent with the Commission's holding in Pinewood, paragraph 3(c) of the Appendix to the Notice ("the filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved") and the Administrative Procedure Act.

11. Accordingly, since SHU/RSB have submitted a technically acceptable counterproposal, they urge the Commission staff to use its discretion and consider the public interest benefits of accepting the SHU/RSB counterproposal and, if the Commission finds a legal (rather than a technical or procedural) impediment, consider a different channel for SHU's and RSB's interest in providing new and additional services.

Respectfully submitted,

**SACRED HEART UNIVERSITY, INC.
RADIO SOUTH BURLINGTON, INC.**

By: 
Mark N. Lipp

Mullin, Rhvne. Emmons and Todel. P.C.

TABLE 1

ALLOCATION STUDY CH 273A SHARON, CONNECTICUT

(FROM WQQQ CP SITE - BPH-880504MC)

APRIL, 1993

Search of channel 273A+ (102.5 MHz), at N. 41 55 3, W. 73 33 32.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
W219AQ	Hurley, etc.	NY	219	D	L	36.0	0.0	266.1°	36.0
WFRH	Kingston	NY	219	A	C	39.0	10.0	281.4°	29.0
WBSLFM	Sheffield	MA	219	A	L	25.0	10.0	28.1°	15.0
WAQYFM	Springfield	MA	271	B	L	73.1	69.0	75.4°	4.1
ALC	Springfield	MA	271	B	U	73.1	69.0	75.4°	4.1
W272AF	Rhinebeck, etc.	NY	272	D	L	27.1	0.0	270.7°	27.1
WZRQ	Ballston Spa	NY	272	A	L	109.7	72.0	346.8°	37.7
ALC	Ballston Spa	NY	272	A	U	109.7	72.0	346.8°	37.7
WFNP	Rosendale	NY	273	A	A	41.1	115.0	254.8°	-73.9
NEW	Bridgehampton	NY	273	A	A	149.7	115.0	139.0°	34.7
WCRB	Waltham	MA	273	B	L	196.9	178.0	77.2°	18.9
WUUU	Rome	NY	273	B	L	198.7	178.0	308.7°	20.7
ALC	Bridgehampton	NY	273	A	V	149.9	115.0	141.1°	34.9
ALC	Waltham	MA	273	B	U	196.9	178.0	77.2°	18.9
ALC	Rome	NY	273	B	U	198.7	178.0	308.7°	20.7
ALC	New York	NY	274	B	U	134.7	113.0	195.4°	21.7
ALC	Manchester	VT	274	B	U	143.4	113.0	14.7°	30.4
WNEW	New York	NY	274	B	L	134.7	113.0	195.4°	21.7
WEQX	Manchester	VT	274	B	L	143.4	113.0	14.7°	30.4
WNEW	New York	NY	274	B	C	134.7	113.0	195.4°	21.7
ALC	Hartford	CT	275	B	U	71.3	69.0	123.6°	2.3
WDRCFM	Hartford	CT	275	B	L	71.3	69.0	123.6°	2.3
ALC	Newburgh	NY	276	A	U	69.1	31.0	224.4°	38.1

TABLE 2
 ALLOCATION STUDY CH 273A SHARON, CONNECTICUT
 (FROM WQQQ PROPOSED SITE - BPH-920709IB)
 APRIL 1993

Search of channel 273A+ (102.5 MHz), at N. 41 55 8, W. 73 34 22.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
W219AQ	Hurley, etc.	NY	219	D	L	34.9	0.0	265.7°	34.9
WFRH	Kingston	NY	219	A	C	37.9	10.0	281.6°	27.9
WBSLFM	Sheffield	MA	219	A	L	25.4	10.0	30.6°	15.4
WAQYFM	Springfield	MA	271	B	L	74.2	69.0	75.8°	5.2
ALC	Springfield	MA	271	B	U	74.2	69.0	75.8°	5.2
W272AF	Rhinebeck, etc.	NY	272	D	L	26.0	0.0	270.4°	26.0
WZRQ	Ballston Spa	NY	272	A	L	109.3	72.0	347.4°	37.3
ALC	Ballston Spa	NY	272	A	U	109.3	72.0	347.4°	37.3
WFNP	Rosendale	NY	273	A	A	40.0	115.0	254.2°	-75.0
NEW	Bridgehampton	NY	273	A	A	150.6	115.0	138.7°	35.6
WCRB	Waltham	MA	273	B	L	198.0	178.0	77.3°	20.0
WUUU	Rome	NY	273	B	L	197.7	178.0	308.9°	19.7
ALC	Bridgehampton	NY	273	A	V	150.8	115.0	140.8°	35.8
ALC	Waltham	MA	273	B	U	198.0	178.0	77.3°	20.0
ALC	Rome	NY	273	B	U	197.7	178.0	308.9°	19.7
ALC	New York	NY	274	B	U	134.5	113.0	194.9°	21.5
ALC	Manchester	VT	274	B	U	143.5	113.0	15.1°	30.5
WNEW	New York	NY	274	B	L	134.5	113.0	194.9°	21.5
WEQX	Manchester	VT	274	B	L	143.5	113.0	15.1°	30.5
WNEW	New York	NY	274	B	C	134.5	113.0	194.9°	21.5
ALC	Hartford	CT	275	B	U	72.4	69.0	123.2°	3.4
WDRCFM	Hartford	CT	275	B	L	72.4	69.0	123.2°	3.4
ALC	Newburgh	NY	276	A	U	68.4	31.0	223.6°	37.4
WGNYSM	Newburgh	NY	276	A	L	68.4	31.0	223.6°	37.4

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 27th day of April, 1993, caused to be mailed by first class mail, postage prepared, copies of the foregoing "REPLY COMMENTS" to the following:

* Leslie K. Shapiro
Allocations Branch
Federal Communications Commission
2025 M Street, N.W.--Room 8313
Washington, D.C. 20554

Lewis E. Rosenthal, Esq.
State University of New York
State University Plaza
Albany, NY 12246
(Counsel to SUNY)

Mr. Kyle E. Magrill
Magrill & Associates
P.O. Box 456
Orange Lake, FL 32681
(Consultant to SUNY)


Veronica Abarre

* Hand Delivered